

**GREAT AMERICAN FARMS, INC. v. WILLIAM P. HEARNE PRODUCE CO., INC.**

**PACA Docket No. R-00-0023.**

**Decision and Order filed June 6, 2000.**

**Burden of Proof - to show what goods were shipped.**

**Evidence - lack of foundation for attestation.**

**Accountings - use of accounting that shows only average price.**

A claimant who asserts that goods subjected to inspection by a receiver were not the goods shipped has the burden of showing what goods were shipped.

A verified signature on a questioned document is insufficient to show the authenticity of the document if there is no showing as to the knowledge of the person who signed it.

Accountings that show only an average price are commonly not used to show the value of consigned goods, or the value of damaged good resold by a buyer. However, where the accounting showed that the average price realized was the same as the current market price, and the amount of goods lost on repacking was less, as a percentage, than the condition defects shown on the arrival federal inspection, an exception was made, and the accounting was used to show the proper returns under a consignment contract.

George S. Whitten, Presiding Officer.

Complainant, Pro se.

Respondent, Pro se.

*Decision and Order issued by William G. Jenson, Judicial Officer.*

**Preliminary Statement**

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of \$2,112.00 in connection with a transaction in interstate commerce involving a truck lot of peaches.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which filed an answer thereto denying liability to Complainant.

The amount claimed in the formal complaint does not exceed \$30,000.00, and therefore the documentary procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements. Complainant filed an opening statement, Respondent filed an answering statement, and Complainant filed a statement in reply. Neither party filed a brief.

**Findings of Fact**

1. Complainant, Great American Farms, Inc., is a corporation whose address is 1287 W. Atlantic Blvd., Pompano Beach, Florida.

2. Respondent, William P. Hearne Produce Co., Inc., is a corporation whose address is P.O. Box 1975, Salisbury, Maryland. At the time of the transaction involved herein Respondent was licensed under the Act.

3. On or about January 8, 1999, Complainant sold to Respondent one partial load of Chilen peaches consisting of 384 cases, size 20's, at \$11.00 per case f.o.b. The peaches were shipped on January 8, 1999, from the cold storage facility used by Complainant (South Florida Cold Storage in Pompano Beach, Florida) to Respondent's customer Dietz & Kolodenco Co. in Chicago, Illinois.

4. The peaches arrived at the place of business of Respondent's customer on Tuesday, January 12, 1999, and were unloaded from the truck. On January 13, 1999, at 7:25 a.m., a lot of 384 cartons of peaches was federally inspected at the place of business of Respondent's customer with the following results in relevant part:

LOT: C  
TEMPERATURES: 38 to 50° F  
PRODUCT: Peaches  
BRAND/MARKINGS: "CUMBREXPORT" (illegible)  
ORIGINS: CE  
LOT ID.:20, 22, 24, 26, 28CT  
NUMBER OF CONTAINERS: 384 Cartons  
INSP. COUNT: N

LOT	AVERAGE DEFECTS	including SER. DAM.	Including V. S. DAM.	OFFSIZE/DEFECT	OTHER
C	03 %	00 %	00 %	Quality (misshapen)	
	10 %	05 %	00 %	Bruising (0 to 27%)	
	04 %	04 %	00 %	Soft	
	06 %	06 %	00 %	Decay (0 to 20%) (Moderate to early(?) stages)	
	23 %	15 %	00 %	Checksum	

GRADE: Lot C: Fails to grade U.S. No. 1 only account condition.

5. Respondent faxed Complainant a copy of the inspection certificate, and it was agreed between the parties that Respondent would handle the product for Complainant's account. On the same day, upon reviewing the copy of the inspection certificate more closely, Complainant concluded that the peaches inspected were not the same peaches that were shipped, and informed Respondent that Complainant would expect full payment of the f.o.b. invoice price.

6. The formal complaint was filed on June 17, 1999, which was within nine

months after the cause of action herein accrued.

### Conclusions

Complainant claimed that the goods subjected to federal inspection by Respondent were not the goods shipped. Complainant had the burden of showing what goods were shipped. Complainant's claim that the peaches inspected in Chicago were not the same peaches shipped is based on the brand displayed on the inspection certificate. Complainant asserts that the peaches shipped were from two lots in its cold storage facility, and that one of these lots (no. 6875) consisted of 169 cartons of Comerical Fruitcola brand, and one (no. 6922) of 215 cartons of unbranded peaches. In support of this contention Complainant submitted an inspection certificate on each lot. One certificate covered 256 cartons of no brand, count 18, 20, and 22, peaches and was performed at South Florida Cold Storage on January 5, 1999. The other certificate covered 326 cartons of "CF" brand, count 20, 22, and 24, peaches, and was performed at the same location on December 28, 1998. Complainant also submitted a copy of a "Pick-Ticket" that purported to show the peaches loaded at the cold storage facility. This document reads as follows:

SOUTH FL PRODUCE

PICK-TICKET

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GREAT AMERICAN FARMS, INC.

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PIC TIC NO. S8382

TRUCKER		DATE	01/07/99
LOAD DATE	01/07/99	TIME	17:12:07

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ORDER G33125

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PO # 3018

quan	product	load
384	PEACHES 20'S	6875 169 / 6922 / 215

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comments/instructions

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EMPLOYEE SIGNATURE \_\_\_\_\_

As indicated above, the space for a signature was blank. Respondent pointed out this fact in its answering statement. In its statement in reply Complainant submitted a copy of the "Pick-Ticket" with a verified signature. Under the rubber stamped statement: "I solemnly swear or affirm that the information in this document is true and correct to the best of my knowledge," was an illegible signature. A notary's attestation was attached. The problem with this effort at supplying the lack of signature on the document is that there is nothing in the record to attest that the person who signed the document had any personal knowledge of what was sworn to. The signature is therefore worthless, and we still have a "Pick-Ticket" that, in the face of Respondent's objection, fails to furnish credible evidence of what was shipped.

Respondent's Jeff Coons engaged in the negotiations concerning the transaction with Complainant's sales manager William Abrams. Mr. Coons asserted during the informal stages of this proceeding that after arrival of the peaches Mr. Abrams informed Coons that "Cumbreexport is his label, but that is not what he put on my truck and therefore would not honor the inspection." Mr. Abrams did not deny this allegation, but did state that "[w]e . . . contend that the label on the product inspected in Chicago (Cumbreexport) was a label that was not handled by any sales agency exclusively, and possibly the Chicago receiver had received these peaches from another source." No brand was stated on the shipping documents, or on the invoice. We find that Complainant has not proven by a preponderance of the evidence that the peaches inspected in Chicago were not the peaches which it shipped.

It is clear from the record that the parties agreed, following the inspection on arrival, for the peaches to be handled on a consignment basis. We have found no basis for voiding the consignment agreement. However, the accounting submitted by Respondent from its Chicago customer, Dietz & Kolodenko Co., gives only an average price for the sales of the peaches. We commonly disallow such accountings,<sup>1</sup> and use the market price at the time and place of arrival adjusted by the percentage of condition defects, in this case 20 percent.<sup>2</sup> The only comparable sales on the Chicago market for January 13, 1999, is of Chilean peaches, size 40's, at \$22.00 per 2 layer container. Peaches are imported from Chile in one layer containers, and the containers are strapped together for marketing. So, a one layer carton in the 20's size range becomes a two layer carton in the 40's size range. This

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<sup>1</sup>*Supreme Berries, Inc. v. R. C. McEntire, Jr.*, 49 Agric. Dec. 1210 (1990).

<sup>2</sup>*Fresh Western Marketing, Inc. v. McDonnell & Blankfard, Inc.*, 53 Agric. Dec. 1869 (1994); *South Florida Growers Association, Inc. v. Country Fresh Growers And Distributors, Inc.*, 52 Agric. Dec. 684 (1993); *V. Barry Mathes, d/b/a Barry Mathes Farms v. Kenneth Rose Co., Inc.*, 46 Agric. Dec. 1562 (1987); *Arkansas Tomato Co. v. M-K & Sons Produce Co.*, 40 Agric. Dec. 1773 (1981); *Ellgren & Sons v. Wood Co.*, 11 Agric. Dec. 1032 (1952); and *G&T Terminal Packaging Co., Inc. v. Joe Phillips, Inc.*, 798 F. 2d 579 (2d Cir. 1986).

means that the peaches, if they had been in good condition on arrival, would have sold for \$11.00 per one layer carton.

The accounting shows that the peaches were reworked with a loss of 60 cartons out of the original 384 (about 15 percent), and sold for an average of \$11.089. The accounting deducts \$84.95 for the federal inspection; \$187.92 (324 at \$.58) for cartage out; repacking at \$1.00 per carton, or \$324.00; disposal \$20.00; and handling at \$1.50, or \$576.00. The net proceeds are reported at \$2,400.13. Thus it can be seen that the reworking lost only about 15 percent, whereas the condition defects shown by the arrival inspection were 20 percent, and that the reworked peaches were sold at market price. Moreover, the repacking fee is reasonable, and the handling fee is about 15 percent, or less than the 20 percent commission which we commonly allow for consignments. It is clear that the accounting, though technically inadequate for not showing a breakdown of the resales with the dates of resales, reflects honest consignment handling of the peaches with good results. Accordingly, we will make an exception to our rule of not using accountings that show average resale prices, and use the accounting submitted by Respondent's customer. Respondent deducted \$288.13, and remitted \$2112.00 to Complainant. Complainant was aware when it agreed to the consignment that the actual sales would be accomplished by Respondent's customer, and presumably that Respondent would receive a fee as the original purchaser and intermediary. The \$288.13 is not unreasonable under the circumstances. We find that there is nothing owing from Respondent to Complainant. The complaint should be dismissed.

### **Order**

The complaint is dismissed.

Copies of this order shall be served upon the parties.

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